

BARRY WAYNE MATTINGLY 30(b)(6)
RED BARN MOTORS vs. COX ENTERPRISES

October 19, 2016

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
4

5 RED BARN MOTORS, INC., PLATINUM MOTORS INC., et
6 al.

8 PLAINTIFFS

9 V.

10 CASE NO. 1:14-cv-01589-TWP-DKL
11

12 COX ENTERPRISES, INC., et al.
13

14 DEFENDANTS
15

16
17 DEPOSITION FOR THE DEFENDANTS,
18 COX ENTERPRISES, INC., et al.:
19

20 The Deposition of Rule 30(b)(6) Witness, Barry
21 Wayne Mattingly, on Behalf of Mattingly Auto Sales,
22 Incorporated, taken in the above-styled matter at
23 Frost Brown Todd, LLC, 400 West Market Street, 3200
24 Mercer Tower, Louisville, Kentucky, on the 19th day of
25 October, 2016, beginning at 9:04 a.m.



EXHIBIT F

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1 A. No.

2 [WHEREUPON, phone rings.]

3 MR. JURKIEWICZ: Are we -- no question
4 pending?

5 MR. MCCARTER: No.

6 BY MR. MCCARTER:

7 Q. All right. And do you remember the name
8 of the officer or officers you met with?

9 A. Yes.

10 Q. What was --

11 A. Curtis Mouser. And I don't -- don't know
12 how to spell that for you. I'm sorry.

13 Q. Okay. There was the one interview,
14 and --

15 A. Yes.

16 Q. -- did he pull records from you?

17 A. Yes. Well, no. He actually had pulled
18 them himself.

19 Q. From where?

20 A. The courthouse. All property records,
21 everything, financial records from liens, that kind
22 of thing.

23 Q. All right. You said it was embezzling, but
24 did he give you any more sense specifically what
25 he was looking at?

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1 A. He was looking at to see what we --
2 basically, he was looking for money possibly that
3 we had borrowed. That's what he was -- told us he
4 was looking at.

5 Q. Okay. But we're not talking about --

6 A. Liens on properties and that kind of
7 thing.

8 Q. Okay. Did he ever formally tell you he
9 was done looking?

10 A. Yes. His -- I think his quote was, and he
11 looked at my lawyer as he looked at the paper and
12 said, "I can't find anything here."

13 Q. Okay. And that all -- that all happened in
14 May of 2012?

15 A. Yes.

16 Q. Okay. How -- do you have any other
17 employees now?

18 A. No.

19 Q. Have you in the last ten years or so?

20 A. No.

21 Q. Do you have any other representatives
22 who might buy cars for you or the like?

23 A. Yes.

24 Q. And who are they?

25 A. Different people. Just to give you some

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1 names, Kenny Barker.

2 Q. Okay.

3 A. In the past -- in the past, a guy named
4 Sherman Dow, Frankie Anthony. I think -- I think
5 Butch Fentress.

6 Q. Contress?

7 A. Fentress, F-e-n-t-r-e-s-s.

8 Q. Okay. Have these folks all been reps for
9 you in the last ten years or so?

10 A. Yes.

11 Q. Are any of them still reps for you?

12 A. Yes.

13 Q. And by "reps," I mean representatives
14 who might --

15 A. Per -- per -- person who --

16 Q. -- who might buy or sell cars for you?

17 A. Yes.

18 Q. Okay. And they do that at auctions?

19 A. Yes.

20 Q. And again talking about Mr. Barker, Mr.
21 Dow, Mr. Anthony, Mr. Fentress, did they have
22 their own dealerships, or did they buy personally
23 for you?

24 A. They bought cars for -- through me; yes.

25 Q. Okay. Do they do any selling for you?

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1 A. Vehicles they bought were generally for
2 themselves to sell or for family members or
3 something like that to re-sell.

4 Q. But they would still do that on your
5 account?

6 A. Yes.

7 Q. All right. So what auctions are you
8 dealing at today?

9 A. Wolfes, W-o-l-f-e-s, Wolfes Auto Auction,
10 and that's in Evansville.

11 Q. Any others?

12 A. That's it, pretty much it. I do go to a
13 few, but rarely, E-town Auto Auction.

14 Q. Say it again.

15 A. E-town.

16 Q. E-town?

17 A. Elizabethtown Auto Auction.

18 Q. And where -- is that Kentucky?

19 A. Yeah, Kentucky. That's actually --
20 actually outside of E-town, just call it E-town. And
21 then also one more that I go to occasionally is
22 Clark County Auto Auction.

23 Q. Can you think of any others you've gone
24 to since May of 2012?

25 A. That's it.



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1 Q. Okay. You don't have internal legal
2 counsel; do you?

3 A. No.

4 Q. Okay. How many cars are on your lot
5 now?

6 A. One.

7 Q. Do you have more than one lot?

8 A. No.

9 Q. Where is your lot?

10 A. Hardinsburg, Kentucky.

11 Q. Can you give me the full address?

12 A. Yeah. It's 3826 South Highway 261, and
13 that's in Hardinsburg, H-a-r-d-i-n-s-b-u-r-g,
14 Kentucky.

15 Q. Okay. Since you incorporated in 2003ish,
16 have you had other lots?

17 A. No.

18 Q. When you're buying and wholesaling cars
19 today, do you bring those back to your lot, or do
20 they go straight to other locations?

21 A. Usually, bring them to the lot.

22 Q. And what's an average number of cars
23 you've had on your lot since 2012, roughly?

24 A. Probably one to two.

25 Q. And before 2012?

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1 A. We had as many as 15 to 20.

2 Q. Is it fair to say that would matter more
3 when you have retail buyers, the need --

4 A. Yes.

5 Q. -- to see the cars. Now, I understand you
6 buy and sell cars. Is it the profit on those cars
7 that you -- is that how you make your money?

8 A. Yes.

9 Q. Okay. So you're trying to buy them low
10 and sell them high?

11 A. Correct.

12 Q. Do you do anything else to make money
13 as Mattingly Auto Sales, Inc.?

14 A. No.

15 Q. No financing?

16 A. No.

17 Q. No service?

18 A. No.

19 Q. No parts?

20 A. No.

21 Q. Okay. Has that been true the whole time?

22 A. The whole time.

23 Q. Okay. Do you specialize in a particular
24 type of car?

25 A. No.



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1 Q. No. You still buying classic cars?

2 A. No.

3 Q. All your cars are used, though?

4 A. Yes.

5 Q. But they can be any different age?

6 A. Correct.

7 Q. Any different value?

8 A. M-hm.

9 Q. You can sell a high end Porsche and -- as
10 well as a low end --

11 A. Not where --

12 Q. -- Sentra?

13 A. -- I'm from.

14 Q. Okay. So you are specializing a little bit
15 in lower end cars?

16 A. Yes.

17 Q. Okay. And what's an average price for
18 it?

19 A. The one we have for sale today is \$2200.

20 Q. Just curious, what kind of car is it?

21 A. It's a 2002 Mazda Millenia.

22 Q. Has the type of car you specialize in
23 changed since 2012?

24 A. Yes.

25 Q. In what way?



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1 A. Basically, lower end cars, not -- not the
2 higher dollar SUVs, trucks, sporty cars, you know.
3 From, say, a \$15,000 car, now we're down to the
4 under \$5,000 cars.

5 Q. Okay. But even before 2012, we're
6 talking mid range 15, 20,000?

7 A. M-hm.

8 Q. Okay. Do you ever get cars from other
9 dealers?

10 A. Yes.

11 Q. Outside of an auction?

12 A. Yes.

13 Q. Okay. And when and what does that look
14 like?

15 A. Just the same. Just if they have
16 something they want to -- they don't want to --
17 they'll take to the auction they don't want, I'll
18 shoot them a price if I -- you know, if it's worth the
19 money, I'll buy it, they'll sell it to me.

20 Q. Okay. Any estimate of what percentage
21 of your deals are from --

22 A. No. No. Wouldn't -- wouldn't have any
23 idea.

24 Q. Okay. Besides auctions, other dealers,
25 any other way you get cars?

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1 A. That's about it.

2 Q. Trade-ins?

3 A. Yes. If -- if there's a trade-in, yes, we
4 do that.

5 Q. Okay. What about online? Do you buy
6 anything online?

7 A. No.

8 Q. You're aware of SmartAuction, eBay
9 Motors --

10 A. Yes.

11 Q. -- those kind of things?

12 A. Yes.

13 Q. And you don't use any of those?

14 A. No.

15 Q. Okay. Is that by choice?

16 A. Yes. I just don't -- nothing worth putting
17 on there.

18 Q. Okay. I just wanted -- I asked you this
19 before, but you don't sell any add-ons or anything
20 like that, insurance products, any --

21 A. No. No.

22 Q. Okay. So if -- if you do have a retail
23 deal, what is the form of payment typically on
24 those? Is it cash or something else?

25 A. Cash, check, whatever; m-hm. We don't

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1 finance unless they have their own financing or
2 something. We don't do it ourselves.

3 Q. Have you ever done self financing?

4 A. No, not through us. We used to finance
5 through another dealer who had financial options.

6 Q. Okay.

7 A. We never had nothing ourselves.

8 Q. So if the buyer comes in with cash, a
9 certified check, or a bank loan, you can take that?

10 A. Right.

11 Q. But you won't do a buy here pay here
12 deal?

13 A. No.

14 Q. Okay. When -- what period of time were
15 you doing the buy here pay here deals through
16 another dealer?

17 A. Well, it wasn't -- it was through a bank,
18 through a bank. It was never a buy here pay here.
19 It was -- it -- we quit that in 2012, I guess.

20 Q. Okay. Who was that bank?

21 A. Fort Knox Credit Union.

22 Q. Say it again.

23 A. Fort Knox -- Fort Knox Federal Credit
24 Union.

25 Q. Okay. When you were working with Fort

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1 Knox, what did those contracts look like? Was it
2 just a loan from Fort Knox to the consumer, and
3 then they would pay you directly?

4 A. Yes. Actually, the -- the loan, I would go
5 through another dealer. They did all the
6 paperwork. I would -- I -- I didn't have an account
7 with them. I would just send the paperwork, the
8 app -- they would fill out an application, I would
9 send it to that dealer, that dealer would do all the
10 paperwork.

11 MR. JURKIEWICZ: Matt?

12 MR. COMAN: I'm here.

13 MR. JURKIEWICZ: We're on the record.

14 Matt Coman is joining.

15 MR. COMAN: I apologize for the
16 interruption.

17 BY MR. MCCARTER:

18 Q. And so please tell me if this is wrong, but
19 so you -- you would make the deal with the
20 consumer, then you would send the paperwork to
21 another dealer, and they would send it in to Fort
22 Knox Credit Union?

23 A. Yes.

24 Q. And then Fort Knox would cut a check to
25 you?

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1 A. To -- no, to Wheatley, to the -- the
2 dealer, to the dealer, and then they would pay me.

3 Q. Okay. And what's Wheatley's full name?

4 A. It was Wheatley Motor Company. They
5 have since gone out of business.

6 Q. Do you know whether Wheatley was -- was
7 running a buy here pay here contract where they
8 would keep getting payments from the consumer,
9 or was everything paid off up front by their --

10 A. Everything was paid by Fort Knox Credit
11 Union to them.

12 Q. Okay. Any other form of financing you've
13 used for your sales?

14 A. No. Not our sales; no.

15 Q. Okay. When you get a trade-in, how do
16 you deal with that?

17 A. You just value it, and they pay the
18 difference.

19 Q. So you write a contract for the new car,
20 you give some trade-in credit, and they pay the
21 difference?

22 A. Correct.

23 Q. In some of those cases, you have to pay
24 off a previous lienholder?

25 A. Some; yes.

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1 MS. LASKY: Don't forget to let him
2 finish his entire question. You're doing great, just
3 give him a little more time.

4 BY MR. MCCARTER:

5 Q. Is it fair to say those wholesale auto
6 auctions kind of work in the same manner?

7 A. Yes.

8 Q. Okay. Can you tell me just generally --
9 I -- and then we'll break it down -- how it works?
10 How do you go in, get a car from an auction?

11 A. Basically, you just go in with your card,
12 go up there, bid on it through the on kube --
13 through the lines. Once you get your ticket, go
14 pay for it, and sign the ticket, get your gate pass,
15 and go home.

16 Q. With the car or without the car?

17 A. With the car.

18 Q. Okay. So it's a competitive environment
19 where you've got multiple dealers trying to get the
20 car?

21 A. Yes.

22 Q. Somehow you scout out the ones you
23 want, and then you bid on them, and if you win the
24 bid, you have to pay for the car, and then you take
25 it?

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1 A. Yes.

2 Q. Okay. Have you ever sold at auctions?

3 A. Yes.

4 Q. How often?

5 A. Well, that's the -- part of the wholesale
6 stuff. You know, it was back before 2012
7 practically every week.

8 Q. Okay. So you've been both the buyer and
9 seller at auction?

10 A. Yes.

11 Q. On hundreds of cars?

12 A. Yes.

13 Q. Okay. How -- how does it work from the
14 seller's side? When do you get paid by the
15 auction?

16 A. If I sell?

17 Q. Yeah.

18 A. If I turn in a title, when you -- when you
19 run a car -- if you sell it, I -- I would have to go up
20 front to give them the title, you know, if it's out of
21 state or Kentucky title, Kentucky being you have to
22 have the dealer signed properly. They turn it in,
23 and they issue me a check.

24 Q. Okay. And that check comes from the
25 auction, not the buyer?

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1 A. Auction; m-hm.

2 Q. And so when you're a buyer, you pay the
3 auction, when you're a seller, you get paid by the
4 auction?

5 A. Correct.

6 Q. Okay. Is that part of the reason you go
7 to auction, to sort of make sure that you get paid
8 if you're a seller?

9 A. Yes.

10 Q. And for the buyer, that's a way to be sure
11 you get a title?

12 A. Yes.

13 Q. And can the buyer usually take the car
14 immediately, or is there any kind of waiting
15 period?

16 A. Usually, if it's -- as long as there's no
17 problems with the car, they have that opportunity
18 to ride and drive, to inspect the car to make sure
19 it's proper, what they advertised, and if it's given
20 a time frame, let's say an hour to check it out --

21 Q. Yeah.

22 A. -- then you have to go up and pay for it,
23 and you take it the same day.

24 Q. And is it my understanding that there's --
25 or it is my understanding that there's some

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1 situations where you might have longer if there
2 was some issue with the car, if it's a --

3 A. Yes.

4 Q. -- frame damage or something?

5 A. Yes.

6 Q. Okay. So there's -- the auction provides
7 certain relief in cases if a car wasn't disclosed
8 properly?

9 A. Yes.

10 Q. So what are the different ways a buyer
11 can pay for the car at the auction?

12 A. Well, you can write them a check, or if
13 you have a floor plan company you can put it on
14 the floor plan.

15 Q. I'll come back to the floor plan in a
16 minute, but can you also pay cash?

17 A. Yes. Check or cash; yes.

18 Q. Does it have to be a certified check or
19 business check or what?

20 A. Business check.

21 Q. Okay. So in all cases, you have to find
22 some way to pay for the car before you take it?

23 A. Yes.

24 Q. All right. So you said floor plan is one
25 way you can get the car out of the auction.

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1 Explain to me what that means, and how does that
2 work?

3 A. If I had a -- if I had an auction ticket
4 before from where I purchased the car --

5 Q. M-hm.

6 A. -- I would take it to the person that's
7 called a finance officer, whoever it would be that
8 does that, that's their job. They would scan it,
9 initial it, scan it, put it in their system, stamp it,
10 initial it, something so where you can get it out of
11 the gate. Like make like a gate pass of where you
12 can take the car out.

13 Q. But they would have to know that you had
14 credit available from the floor planner in advance?

15 A. Right.

16 Q. Okay. And tell me if this is wrong, but a
17 floor -- a high level floor planner is somebody you
18 have a line of credit with to buy cars?

19 A. M-hm.

20 Q. Right?

21 A. Yes.

22 Q. Okay. And so somehow the floor planner
23 and the auction communicate about how much
24 credit you have as Mattingly Auto Sales, and then
25 you can just say, "Put it on my floor plan"?

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1 A. Yes.

2 MS. LASKY: Object to the form.

3 BY MR. MCCARTER:

4 Q. Have you used all those different forms of
5 payment: cash, check, floor plan?

6 A. Yes.

7 Q. So at a high level after you get a car at
8 auction, then what do you do with it as far as
9 business?

10 A. Just --

11 MS. LASKY: Object to the form. You can
12 answer.

13 THE WITNESS: Okay.

14 A. Just take it to the lot, clean it up,
15 whatever it needs to be, put it up for sale.

16 BY MR. MCCARTER:

17 Q. Okay. Would you typically re-sell a car
18 at the same auction, or would you do something
19 differently?

20 A. Typically, the way I operate I would take
21 it to another auction.

22 Q. And so you might buy it at an auction
23 where it's less valued, and take it to an auction
24 where it's more valued?

25 A. Yes.



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1 Q. So you said when you're the seller you
2 have to provide the title to get paid; right?

3 A. Yes.

4 Q. And so does that sometime -- does that
5 always happen on sale day?

6 A. I tried to, but sometimes it didn't happen,
7 you know. They would -- I wouldn't get paid -- I
8 never got paid until I provided them a title.

9 Q. But that sounds like some sellers can
10 provide it later; is that right?

11 A. Oh, yeah, you -- you can turn it in later.
12 They would charge you a fee for that, but I would
13 never get paid unless I produced a title.

14 Q. All right. But does a buyer -- does a
15 buyer know the title is not going to be available
16 immediately?

17 A. Some do; yes.

18 Q. And how do they -- how do you know that?

19 A. Well, it's -- it's always have to announce
20 it. It's called TA.

21 Q. Okay.

22 A. It would be title absent. And it kind of
23 goes up on the screen, and they know there will
24 not be a title at that time.

25 Q. Okay. Did you ever buy a car TA?

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1 A. Yes.

2 Q. What -- what -- why would you buy a car
3 TA if you can't immediately re-sell it?

4 A. Because eventually they'll -- they'll get
5 me title. They have a -- a time frame usually of
6 three weeks. If they don't provide you with a clear
7 title, you can take the car back, and the deal is
8 canceled.

9 Q. Okay. In that mean -- in the meantime,
10 can you go ahead and get the car ready and start
11 offering it?

12 A. Yes.

13 Q. Did you ever re-sell a car before you got
14 the title from the auction?

15 A. Yes.

16 Q. How often has that happened?

17 A. It was rare.

18 Q. Did you ever have a situation where that
19 title never shows up and you have to unwind the
20 deal?

21 A. It -- I have had a few, very few,
22 fortunately.

23 Q. And I know we've -- this has been a fairly
24 general conversation, but has that been the sort of
25 process at auction the whole time from 2003

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1 line during 2006-2012, what was your
2 understanding of when payment would be due for
3 the money you borrowed?

4 A. When I sell --

5 MS. LASKY: Object to the form.

6 A. When I sold the car.

7 BY MR. MCCARTER:

8 Q. That second? Within a day?

9 A. I think they had -- I think in their
10 paperwork they had a three-day period. I'd have
11 to look back at that to see.

12 Q. What if you never sold the car? Is there
13 some sort of cut off?

14 A. Yeah. I think -- I don't want to --

15 MS. LASKY: Object to the form. Go
16 ahead.

17 A. I -- I believe it was 120, 120 days with
18 DSC. I could be wrong.

19 BY MR. MCCARTER:

20 Q. Okay.

21 A. But I rare -- I rarely ever -- never -- I
22 don't think it ever happened. I either sold it or
23 took it back to the auction, whatever.

24 Q. But there -- there would be a maturity
25 date if you didn't pay?

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1 A. Correct.

2 Q. Okay. And did AFC work the same way?

3 A. Yes.

4 Q. What -- do you remember what their
5 maturity date was?

6 A. No, I don't.

7 Q. What about MAFS, the same way?

8 A. Pretty much the same.

9 Q. So you'd have to pay a car if you sold it
10 within a short time period, and then, if you didn't
11 sell it, there would be a cut off?

12 A. Right.

13 Q. Okay. Were those floor plans limited to
14 cars you bought at auction?

15 A. No.

16 Q. So you could take a car you bought from
17 another dealer and put it on floor plan?

18 A. Trade; m-hm.

19 Q. Okay. Was that process any different?
20 How did you --

21 A. No.

22 Q. Well, how -- so did they pay the dealer
23 directly?

24 A. No, they paid -- they would pay me.
25 Yeah, they paid me.

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1 Q. So it sounds a little different; right?
2 You're going to have to submit some paperwork --

3 A. Yeah. Yes.

4 Q. -- and you're going to get payment?

5 A. I would -- I would produce a title to them,
6 and they would pay me for the trade. Put it on the
7 floor plan for that amount, I guess you'd say.

8 Q. So how did they know the amount to
9 finance?

10 A. Usually, my treasurer would work the
11 money, or they have a -- they have a guide they go
12 by.

13 Q. So some way you would show them what
14 you paid for it, they would compare to it some
15 value guide, and --

16 A. M-hm.

17 Q. -- they would finance that amount?

18 A. Yes.

19 Q. Okay. What about at auction, did they
20 ever reject your financing because you paid too
21 much for it?

22 A. No.

23 Q. So they would just go with the auction
24 price?

25 A. Yes.



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1 Q. Did you have some understanding that the
2 cars you acquired were -- were collateral for the
3 loans?

4 A. Yes.

5 Q. Do you understand what I mean by
6 collateral?

7 A. Yes.

8 Q. They could pick up the cars if they didn't
9 get paid?

10 A. Yes.

11 Q. Okay. And that was true of all the floor
12 planners?

13 A. Yes.

14 Q. Do you -- do you know what security
15 interest means?

16 A. No.

17 Q. Okay. And so you would -- the -- the
18 general way it worked, would -- you would repay
19 the principal you borrowed, plus interest, plus fees
20 to the floor planner for the cars you bought?

21 A. Yes.

22 Q. Okay. How would you know exactly how
23 much to pay them? Like, how much the principal
24 was, plus the interest, plus the fees?

25 A. Computer. They had a website with the

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1 balances.

2 Q. DSC did?

3 A. Yes, both. And MAFS.

4 Q. So each time you needed to pay off a
5 unit, you would look it up on the website and then
6 pay that amount?

7 A. Yes.

8 Q. Was that typically by ACH electronic
9 payment or by check?

10 A. Yes, ACH.

11 Q. ACH; okay. Was that true the whole time
12 you were with DSC?

13 A. Yes.

14 Q. Is that true the whole time you were with
15 MAFS?

16 A. Well, MAFS -- MAFS worked a little
17 different. I could pay off online or at the auction,
18 because they held the titles at the auction. So it
19 was convenient.

20 Q. And you did both?

21 A. Yes.

22 Q. What about statements, did you get
23 statements from DSC?

24 A. No. It -- only thing we had was the
25 online.



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1 Q. Okay. Did you have a secure log-in you
2 could look at any time and see what you were --
3 what you owed DSC?

4 A. Yes.

5 Q. Okay. Same with MAFS?

6 A. Yes.

7 Q. How about AFC?

8 A. I -- they might have. I don't remember
9 about AFC.

10 Q. Okay. So other than AFC, DSC, and
11 MAFS, have you ever entered into any inventory
12 financing arrangement with anybody else?

13 A. No.

14 Q. Do you have any inventory financing
15 arrangement now?

16 A. No.

17 Q. How do you pay for cars you buy now?

18 A. Just strictly cash.

19 Q. And that's out of just operations of the
20 business?

21 A. Yes.

22 Q. Okay. But at Wolfes, E-town, and Clark
23 County, they still take your business checks?

24 A. Yes.

25 MS. LASKY: Can we just take a quick --

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1 MR. MCCARTER: Yeah.

2 MS. LASKY: -- break?

3 MR. MCCARTER: That's fine.

4 [WHEREUPON, a brief recess is taken.]

5 [WHEREUPON, document referred to is marked
6 Defendants' Exhibit 2 for identification.]

7 BY MR. MCCARTER:

8 Q. Let me show you a couple of documents,
9 break up the monotony here. I'll represent to you
10 this is just a printout from the State of Kentucky
11 website, and it shows Mattingly Auto Sales, Inc.
12 being incorporated in March of 2003; do you see
13 that?

14 A. Yes.

15 Q. Does that look right to you?

16 A. Yes.

17 Q. Okay. And it's -- as you testified earlier,
18 it shows you and Ms. Mattingly as the officers; do
19 you see that?

20 A. Yes.

21 Q. Okay. Do you see anything on this that
22 looks wrong to you?

23 A. No, I don't.

24 Q. Okay. Do -- side question: Do you --
25 does Mattingly Auto Sales do its own tax returns?

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1 A. Yes.

2 Q. You file tax returns in the name of
3 Mattingly Auto --

4 A. Yes.

5 Q. -- Sales, Inc.?

6 A. Yes.

7 Q. And who prepares those?

8 A. Jackson Hewitt.

9 Q. Okay. And you have those going back
10 several years?

11 A. Yes.

12 Q. Do you have any from pre-2012?

13 A. Prob -- I'm sure we do, but I don't know
14 how far back we kept.

15 Q. Okay. And if I didn't say it, that's
16 Exhibit 2. I'm going to show you what we're going
17 to call Defendants' Exhibit 3.

18 [WHEREUPON, document referred to is marked
19 Defendants' Exhibit 3 for identification.]

20 BY MR. MCCARTER:

21 Q. It's two pages front -- one front, one
22 back. And I'll represent to you this is just a
23 printout from what appears to be your website, and
24 you can see at the bottom it was printed on
25 October 12th, 2016; do you see that?

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1 A. Yes.

2 Q. Does this look like your website?

3 A. No, this is not my website or my car lot.

4 Q. So it's not you at all?

5 A. No.

6 Q. Okay. You -- you see on that first page,
7 even though it's got a Hardinsburg office --

8 A. M-hm.

9 Q. -- this is not you?

10 A. No, that's not my office.

11 Q. Do you know who -- who this dealer is?

12 A. Yes.

13 Q. Do they have any connection to you?

14 A. No. Other -- well, one. Name.

15 Q. Okay.

16 A. Outside of that, no.

17 Q. All right. Do you have a website?

18 A. No.

19 Q. Okay. All right. It's not a very important
20 exhibit, but it's now marked as an exhibit.

21 All right. I think you said your relationship
22 with DSC would have began around 2006?

23 A. I believe so.

24 Q. And your relationship with MAFS began
25 before that; right?

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1 A. Yes.

2 Q. Okay. I'll go ahead and show you another
3 document we may use later. This will be
4 Defendants' Exhibit 4.

5 [WHEREUPON, document referred to is marked
6 Defendants' Exhibit 4 for identification.]

7 BY MR. MCCARTER:

8 Q. And these I'll represent to you are your
9 interrogatory responses in this case. You --
10 take -- take as much time as you want, but I'm
11 not -- I'll call your attention to anything specific
12 we need to cover, but have you seen this document
13 before?

14 A. Yes.

15 Q. And do you recall participating in
16 preparing these responses?

17 A. Yes.

18 Q. And you reviewed and they're true, to the
19 best of your knowledge?

20 A. Yes.

21 Q. Okay.

22 MS. LASKY: And I'll represent to you we
23 have a verification that I'll give to you-all
24 tomorrow.

25 MR. MCCARTER: Okay. Signed by Mr.

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1 Mattingly?

2 MS. LASKY: Correct.

3 MR. MCCARTER: Okay.

4 BY MR. MCCARTER:

5 Q. And so, if you -- if you flip over to
6 Number 2, it says you started with -- I think it says
7 you started with you DSC in late November
8 of 2006, late -- late October and early November
9 of 2006; is that --

10 A. Which one --

11 Q. -- do you see that?

12 A. No. Let me get to that page.

13 Q. It's Page 4.

14 A. Okay.

15 MS. LASKY: It's right here.

16 THE WITNESS: Okay.

17 A. All right. Now, could you repeat the
18 question?

19 BY MR. MCCARTER:

20 Q. All right. So this -- this language in the
21 middle of Response Number 2 says in late October,
22 early November 2006, and then that's when you
23 executed a DSC note; do you see that?

24 A. Yes.

25 Q. Okay. Do you recall sort of how your

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1 relationship with DSC began? Like, how did you
2 find DSC, or how did they find you?

3 A. They -- they had a representative at the
4 Louisville Auto Auction, Manheim Louisville, and
5 he was there, and Scott and I, we just was talking,
6 and asked if I'd be interested, and I looked -- he
7 had a brochure, and I looked it over.

8 Q. And what was attractive about that offer?

9 A. Just the available money.

10 Q. Do you recall whether the fees and
11 interest were higher, lower than AFC?

12 A. Comparable at the time.

13 Q. And how about MAFS, how did they
14 compare to MAFS?

15 A. Comparable.

16 Q. Okay. So it was primarily having more
17 credit that attracted you?

18 A. Yes.

19 Q. Okay. And who was it -- do you remember
20 the name of that representative?

21 A. Yes. It's Mark Holley.

22 Q. Okay. Do you recall anything more
23 specific about what Mark Holley said to you in that
24 initial meeting?

25 A. Nothing. Just basically over the terms

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1 and the -- the -- how much credit available,
2 interest rate. That was pretty much it.

3 Q. Okay. Was there any specific discussion
4 about how interest would be calculated?

5 A. I think it was in the -- in the brochure or
6 maybe what I signed. It was a percentage plus
7 prime with the prime subject to change.

8 Q. Was there any specific discussion about
9 when interest would begin to run?

10 A. No.

11 Q. And so did you meet with anybody else
12 from DSC before you signed up with DSC?

13 A. No.

14 Q. Did you take the loan forms at that point
15 or just a brochure?

16 A. First meeting was a brochure, and the
17 second he had the forms, and then I signed them.

18 Q. Okay. So you signed them physically
19 present with Mark Holley?

20 A. Yes.

21 Q. Okay. So your interrogatories say you
22 worked with Mark Holley, Lourdes Givens, and two
23 other reps of NextGear at different times.

24 A. Yes.

25 Q. Does that sound true?

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1 A. Yes.

2 Q. Okay. And do -- you don't remember the
3 names of the two --

4 A. Well, I do -- after all this, we found a
5 name -- I -- I couldn't think of his name. One of
6 the gentleman's name for NextGear was Art -- Art
7 Felix.

8 Q. Art Felix.

9 A. Art Felix.

10 Q. You don't remember the fourth person?

11 A. No. I think her name -- no, no. She
12 was -- the situation was Mark Holley got sick.
13 They had a couple reps in between there, and then
14 Lourdes Givens was the -- took over.

15 Q. Okay. So these were -- from your
16 perspective anyway, these were NextGear -- I'm
17 sorry, DSC's reps at Manheim Louisville?

18 A. Yes.

19 Q. Okay. Besides those reps at Manheim
20 Louisville, did you interact with anybody else from
21 DSC?

22 A. No. No. They -- they would travel to
23 different auctions, as well.

24 Q. Okay. Do you recall who you interacted
25 with from MAFS?

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1 A. Donna Kronauer. Is that how -- I don't
2 know how you pronounce that.

3 MS. LASKY: Kronauer.

4 A. Kronauer. Sorry.

5 BY MR. MCCARTER:

6 Q. Okay.

7 A. Excuse me. Kronauer. She was the rep
8 for MAFS.

9 Q. Okay. I don't think we've seen it in the
10 production, but you don't have the original
11 brochure from DSC that you looked at?

12 A. No.

13 Q. Okay. And so I'm sorry if this is
14 repetitive, but you -- did you interact with DSC at
15 any other auction?

16 A. Yes.

17 Q. Which one?

18 A. Both the representatives, Mark Holley,
19 Lourdes Givens, Art Felix would go to -- I would
20 see them at Louisville, Bowling Green, and
21 Evansville, which would be Wolfes.

22 Q. Okay. And so it sounds like they kind of
23 worked that region, that circuit?

24 A. Yes.

25 Q. Okay. All right. Number 4.

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1 A. 4.

2 Q. I'm going to show you what we're going to
3 call Defendants' Exhibit 4, and I'll represent for
4 the record that this is a composite exhibit. It
5 starts with NextGear 003432, but it has various
6 other Bate's numbers included that go through
7 NextGear 003392. They're not all sequential.

8 So again, take as much time as you want, but
9 I'll call your attention to specific questions. I'm
10 not going to ask you to recite the whole document.

11 A. Okay. I'm just going to read that.
12 [examines document]

13 Q. Okay. So Exhibit 4, does this generally
14 look like an application from you to DSC, as well
15 as some other loan agreements you signed with
16 DSC?

17 A. Yes.

18 Q. Okay. And on that first page that's
19 numbered 3432 at the bottom, NextGear 00 --

20 A. Yes.

21 Q. -- 3432, that is your signature?

22 A. Yes.

23 Q. And it's -- it's dated October of --
24 of 2006; do you see that?

25 A. Yes.

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1 auction, need to pay off a particular vehicle, and I
2 would give him a check. He worked out of
3 Lexington.

4 Q. And he'd hand you the title?

5 A. He'd hand me the title, and I'd hand him
6 the check.

7 Q. Okay. And I should have asked this
8 before, but that would generally mean that DSC
9 would hold the titles after you floored the car with
10 them until they were paid?

11 A. Yes.

12 Q. And is that true of other floor plans?

13 A. Yes.

14 Q. Okay. And that's sort of part of their
15 security to make sure they get paid?

16 A. Yes.

17 Q. Do you -- do you have any knowledge of
18 while they were holding those titles whose name
19 the vehicle be titled in?

20 MS. LASKY: Object to the --

21 A. No.

22 MS. LASKY: -- form.

23 A. No.

24 BY MR. MCCARTER:

25 Q. During that period you were with

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1 DSC, 2006 to 2012, how did you keep your books
2 internally at Mattingly, if any?

3 A. Well, I would -- I don't know that I
4 understand the question.

5 Q. Okay. So presumably, you keep some
6 accounting record of some sort of what you paid
7 for a car, how much you sell it for, that sort of
8 thing?

9 A. Yes. We'd have something from --
10 familiar -- we called it the manilla -- the binders,
11 and we have ve -- all the -- everything related to
12 that car in that particular binder.

13 Q. Okay. Is that --

14 A. Auction ticket.

15 Q. Have you heard the term deal jacket? Is
16 it kind of the same thing?

17 A. Yeah, jacket. A jacket; yes.

18 Q. Okay.

19 A. Thank you for that term. I knew it, but I
20 just couldn't -- it was on the tip of my tongue.

21 Q. No problem. But at some point when
22 you've got to file your taxes, I guess, you've got
23 to translate that to profit or loss; right?

24 A. Correct.

25 Q. How do you do that?

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1 A. Well, we just -- we -- actually, my wife
2 puts them into the computer --

3 Q. Uh-huh.

4 A. -- and we just calculate every one of them
5 at -- at the end of the day when it was sold. We
6 knew on that vehicle what the profit or loss was.

7 Q. Okay. Do you know during 2006, 2012,
8 were you using a particular software to do that?

9 A. No, I don't -- I don't know.

10 Q. You may have been, you just don't know?

11 A. Yeah. There was something, but I don't
12 know what it would be.

13 Q. Okay. But as -- as far as you know, you
14 didn't attempt to track how much interest and fees
15 would be due to NextGear during that period? You
16 just looked at their online statement for that?

17 A. Yes. And we could do it the end of the
18 year statement, as well. There was an end of the
19 year statement they could pull.

20 Q. From NextGear?

21 A. From NextGear.

22 Q. Okay. And when I say NextGear in those
23 last two questions, we're talking about DSC; right?

24 A. DSC; yes.

25 Q. Okay. So we talked about, you know,

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1 your initial discussion with Mark Holley, and you
2 said there was no specific discussion about the
3 timing of interest, when it would start accruing;
4 right?

5 A. Correct.

6 Q. Did you ever talk about that issue with
7 anybody at DSC?

8 A. Possibly. I -- I just don't remember.

9 Q. As we sit here today, you don't remember
10 any specific conversations with anybody at DSC
11 about when DSC would start charging interest?

12 A. Well, occasionally, they -- if I was --
13 can -- can I give you an example?

14 Q. Yeah.

15 A. If I bought a car today, and let's say I
16 sold it next week, and I paid it off online, there
17 would -- and I -- and when they -- when I check,
18 there's no title available. So they basically didn't
19 have the title yet, but yet I was still paying the
20 interest, and they didn't even have the title.

21 So I would have to wait until they got the title
22 to send to me. Other than that, that would be
23 about the only thing.

24 Q. But did you -- do you remember talking to
25 somebody at NextGear about that?

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1 A. Yes.

2 Q. And who was that?

3 A. That would be both Mark Holley, as well
4 as -- mostly, Lourdes Givens.

5 Q. Okay. And what did you say to them
6 about it?

7 A. Just in a -- I said in a jokingly -- I'm sure
8 that they told me it was common practice, but I
9 said, "That's kind of a shame that I'm paying
10 interest on something that you-all are still holding
11 the money on that I don't even have yet."

12 Q. M-hm. But do you remember any specific
13 discussions with anybody at DSC about when
14 interest would start accruing on your floor plan
15 cars in the first place?

16 A. Other than --

17 MS. LASKY: Object to the form.

18 A. Other than that, no.

19 BY MR. MCCARTER:

20 Q. Okay. All right. I'm going to show what
21 we're going to call Defendants' Exhibit 9.

22 [WHEREUPON, document referred to is marked
23 Defendants' Exhibit 9 for identification.]

24 BY MR. MCCARTER:

25 Q. This document is Bate's labeled MA 252

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1 through 283. Do you see that at the bottom? You
2 see those numbers --

3 A. Yes.

4 Q. -- right?

5 A. I'm sorry.

6 Q. 252 --

7 A. Yes. Yes. I'm sorry.

8 Q. No problem. And I'll represent to you
9 that MA generally means it's a document that you
10 produced to us. So is -- do you recognize this
11 document?

12 A. Yes. It looks like a sheet; yes.

13 Q. Does it -- well, it -- it starts with
14 Manheim Automotive Financial Services, Inc.
15 Security Agreement, Inventory Financing bridge
16 Line of Credit; do you see that?

17 A. Yes.

18 Q. All right. Is it fair to say this is
19 generally the loan agreements you signed with
20 MAFS in -- in July of 2010?

21 A. Yes. It looks like the typical -- typical
22 thing; yes.

23 Q. Okay. And those are your signatures
24 internally, like, for example, on 2 -- Page 272
25 and 275?

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1 A. Yes.

2 Q. Okay. And that's your signature on 279?

3 A. Yes.

4 Q. And 283?

5 A. Yes.

6 Q. Okay. So, after July 2010, this would
7 generally be the loan agreements that would
8 govern your floor plan with MAFS?

9 A. Yes.

10 Q. Okay.

11 MR. MCCARTER: What number are we
12 on?

13 THE WITNESS: Number 10 will be the
14 next one.

15 [WHEREUPON, document referred to is marked
16 Defendants' Exhibit 10 for identification.]

17 BY MR. MCCARTER:

18 Q. All right. I'm going to show you what
19 we're going to call Defendant's Exhibit 10. This is
20 Bate's labeled MA 242 through 244. This is called
21 "MAFS Floor Plan Guideline"; do you see that?

22 A. Yes.

23 Q. And is that your signature on the second
24 page?

25 A. Yes.

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1 Q. Okay. So these are generally guidelines
2 for the MAFS line around the time you signed this?

3 A. Yes.

4 Q. Okay. And at a high level do you
5 understand that part of your complaint in this case
6 relates to when interest began accruing on your
7 DSC line?

8 A. Yeah.

9 Q. Okay. Can you give me your
10 understanding of what your concern is?

11 A. I believe they were -- basically when I
12 bought a car title attached or title absent, it
13 appears that they were writing -- charging me
14 interest from Day 1, and MAFS was even charging
15 me interest, two -- two days worth of interest the
16 day I put it on the floor plan.

17 Q. So on the DSC side, is your only concern
18 the cars that were sold title absent?

19 MS. LASKY: Object to the form.

20 A. Possibly. I believe so.

21 BY MR. MCCARTER:

22 Q. Okay. So if the title is present on the
23 day of the auction, you believe it would be
24 appropriate for DSC to start charging interest from
25 that day?



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1 BY MR. MCCARTER:

2 Q. Okay. But you were able to take the cars
3 put on the DSC line because you told the auction
4 you were putting on the DSC line?

5 A. Yes.

6 Q. Okay. And that's true whether the title is
7 present or not?

8 A. Yes.

9 Q. Okay. Let me show what you we're going
10 to call Exhibit 11.

11 [WHEREUPON, document referred to is marked
12 Defendants' Exhibit 11 for identification.]

13 BY MR. MCCARTER:

14 Q. And this document is Bate's labeled
15 MA 306 through 309. So this was produced to
16 you -- I mean, by you to us in this case. Do you
17 recognize this document?

18 A. Yes. It looks like a dealer statement
19 document from DSC.

20 Q. Okay. And if you -- you can see it was
21 printed on -- on -- in the -- I guess, let's see, this
22 is the second page of the exhibit. You can see a
23 printed date of Monday, January 11th, 2010 at 4:45
24 p.m.; do you see that?

25 A. Yes.

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1 Q. And then it -- it's got a start date of -- on
2 the left-hand side from January 1st, 2009 through
3 December 31st, 2009; do you see that?

4 A. Yes.

5 Q. Would this be that sort of year end
6 statement you were talking about?

7 A. Yes. Yes. Yeah. Correct.

8 Q. And so is this something you could go
9 online and get from DSC and then print on your
10 end?

11 A. Yes.

12 Q. Okay. It looks like there's a fax line at
13 the top of the document on each page; do you see
14 that?

15 A. Where -- if you could point it out to me?

16 Q. Yeah.

17 MS. LASKY: This.

18 BY MR. MCCARTER:

19 Q. Right there.

20 A. Oh, okay. Yes. I'm sorry.

21 Q. Do you --

22 A. Yes.

23 Q. -- see that?

24 A. Yes.

25 Q. And it -- it shows a fax date of

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1 January 11th, 2010, and it's got a fax number, and
2 then it says "Dealer Services Corporation." Do
3 you read that as a document faxed to you by DSC
4 or from you to DSC?

5 A. From DSC to us.

6 Q. Okay. Yet -- I mean, I know you -- you
7 probably don't remember, but do you have any
8 reason to doubt it was faxed to you by DSC on
9 January 11th, 2010?

10 A. No, I don't.

11 Q. Okay. And do you read this sort of as all
12 the cars financed during that period and the total
13 due and paid on those?

14 MS. LASKY: Object to the form.

15 A. It appears so, as well as where it also
16 has collateral audits, as well.

17 BY MR. MCCARTER:

18 Q. Okay. The top of Page 2?

19 A. Yes, it does, and I -- apparently, I missed
20 something here. It appears that they charged me
21 two lot audits in the same month. I must have
22 missed that.

23 Q. Okay. And you didn't have two lots?

24 A. No. It looks like they charged me on
25 the 22nd, and another 75 on the 23rd.

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1 Q. Okay. What is a collateral audit?

2 A. It's -- it's where they come and check the
3 inventory of your cars to make sure that they're
4 there or where they're at and there's -- that kind
5 of thing.

6 Q. Okay. And that's -- that's sort of a
7 routine thing that you agreed they could do?

8 A. Yes.

9 Q. Okay. And you -- you produced this to
10 us. Do you have any recollection of where you
11 would have found this or where you would have
12 kept it?

13 A. It would have been -- well, at the time,
14 we would have had it in our records, but it -- we
15 would have got it offline at DCS's website.

16 Q. Okay. Well, and we talked a minute ago
17 that maybe it was faxed to you by DSC?

18 A. Yes. I -- I would say the year end
19 statement was probably faxed to us. They --
20 because we probably had to call -- they would
21 probably only do up to date what was current on --
22 online.

23 Q. Okay.

24 A. So we'd have to get a current, like, an up
25 to date thing for taxes.

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1 Q. Okay. And actually, you know, I -- I
2 didn't see this a minute ago, but it -- how many
3 pages are in your document? I'm sorry.

4 A. I go all the way up to 4245. I'm sorry.
5 Or 4 -- 452. I'm sorry. Looks like there's -- it's a
6 four-page -- four pages.

7 Q. Okay. And so, actually, if -- it looks like,
8 again, it's a composite exhibit. If you -- if you go
9 back a couple of pages and there's MA 310 --

10 A. Yeah.

11 Q. -- and it looks like a fax cover sheet that
12 probably went with the statement that we just
13 looked at that's on 307, 308.

14 A. M-hm.

15 MS. LASKY: I'm sorry. What -- is the
16 question --

17 A. You'll have to repeat --

18 MS. LASKY: -- whether --

19 A. -- the question.

20 BY MR. MCCARTER:

21 Q. Yeah. And -- and I don't want to get
22 bogged down on this, but it looks like maybe it was
23 produced -- maybe produced out of order. Looks
24 like 310, Page 310 might be the fax cover sheet
25 for 307 and -- through 309, because it's got the

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1 same date, it's got the fax number.

2 A. Yes, that's possible.

3 Q. Okay. And -- no, let me step back. 310
4 looks like it might be a request from Ms. Mattingly
5 to fax the interest paid in 2009; do you see that?

6 A. Yes.

7 Q. Okay. And so maybe this statement is
8 what was faxed back?

9 A. Yes.

10 Q. Okay. All right. So let's move on in that
11 same exhibit to Page 361. It's the next page after
12 the cover sheet; do you see that?

13 A. Yes.

14 Q. Again, this was produced by you to us.
15 Do you know what this is?

16 A. No, I don't.

17 Q. Does it look like -- I mean, I see AFC in
18 the upper left-hand corner; do you see that?

19 A. Yeah. This is something from AFC,
20 apparently.

21 Q. Okay.

22 A. So you produced it to us, but it may not
23 have anything to do with DSC?

24 A. No.

25 Q. Okay. All right. Now, if we go on to

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1 Page 452 and 453, it's the last two pages in that
2 exhibit; do you see that?

3 A. Yes.

4 Q. And this document looks like it's called
5 "Receivable Detail Report"?

6 A. Yes.

7 Q. And it's got a date of 5/23/2012?

8 A. Yes.

9 Q. Do you have any sense of what this is and
10 what it shows?

11 A. This is --

12 MS. LASKY: Object to the form.

13 A. This is the final -- this is the final cars
14 that we had with DSC.

15 BY MR. MCCARTER:

16 Q. Okay. And you -- you had possession of
17 this. Do you recall how you got possession of it?

18 A. I'm sure it was off the website.

19 Q. Okay. You know, it shows 120,311.28
20 outstanding at that point. Do you see in the
21 middle?

22 A. Yes.

23 Q. Do you -- do you know whether Mattingly
24 ever paid that to DSC?

25 MS. LASKY: Object to the form.

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1 A. No.

2 BY MR. MCCARTER:

3 Q. No, you didn't pay it?

4 A. Did not; no.

5 Q. Okay. And however -- why did you not
6 pay it?

7 A. Excuse me?

8 Q. Why did you not pay that?

9 A. These cars were involved in the
10 repossession. Some of them were. Some of them
11 were already paid off or sold. Sorry. Sold.

12 Q. And so do you have some recollection
13 that some cars were resold and reduced that
14 amount?

15 A. We had -- we had actually -- several of
16 these cars were ours that we paid off ourselves,
17 and some of them went to repossession.

18 Q. Okay. Do you recall whether there was a
19 deficiency on the repossessed cars?

20 A. Yes.

21 Q. And was that paid?

22 A. No.

23 Q. Okay. All right. At some point, I think
24 you said this already, DSC declared a default and
25 picked up cars?

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1 A. Yes.

2 Q. Okay. And what's your recollection of --
3 of when that happened?

4 A. May the 9th of 2012.

5 Q. Okay. Do you recall any discussions with
6 DSC at the time about why they did that?

7 A. No, they did not. No reason.

8 Q. No reason. Did -- did you have any
9 problems with MAFS around the same time?

10 A. No.

11 Q. No. Did MAFS ever declare default?

12 A. Yes, at the same -- they did it at the
13 same time.

14 Q. Did they pick up cars?

15 A. Yes.

16 Q. Okay.

17 A. No. I -- no. I only took one back to
18 them.

19 Q. Okay. So you voluntarily returned one to
20 MAFS after they declared a default?

21 A. Yes, involuntarily [phonetic]. The
22 remainder of DCS, as well.

23 Q. So DSC picked up some cars
24 involuntarily, you returned others?

25 A. Yes.

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1 Q. Okay. And both of those things happened
2 in May of 2012?

3 A. Yes.

4 Q. Okay. Did you have any -- do you recall
5 whether the AFC line was still out -- or still
6 existing at that time?

7 A. It was not.

8 Q. Was not; okay. Did you have any other
9 sources of inventory credit at the time?

10 A. No.

11 Q. Okay. Had you heard anything from the
12 police, the -- the state police you talked about
13 before, before DSC declared its default?

14 A. No.

15 Q. Just as a general matter apart from DSC,
16 would you ever floor the same car more than once?

17 MS. LASKY: Object to the form.

18 A. Possibly.

19 BY MR. MCCARTER:

20 Q. Okay. In what circumstances would you
21 do that?

22 A. If it was in my -- it was my name, I would
23 floor it for -- use the money.

24 Q. You would floor it and use the money?

25 A. Yeah. Floor it, and -- and they would

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1 pay -- give me -- send me a check or whatever.

2 Q. So if -- was there ever a situation where
3 you bought it at auction, put it on a floor plan, and
4 then, at some point, you re-floored the same car
5 with another --

6 A. Yes.

7 Q. -- company? When would that happen?

8 A. If it ran over in time, and generally it was
9 done by Donna, or Lourdes would do it for me.

10 Q. Okay. And how did they value the car at
11 that time? How much -- how did they value how
12 much to finance at that time?

13 A. I --

14 MS. LASKY: Object to the form.

15 A. They would -- I guess they would use a --
16 they had a chart, or they had the auction ticket
17 where I purchased it.

18 BY MR. MCCARTER:

19 Q. Okay. Did you ever use the original
20 auction ticket to floor it a second time?

21 MS. LASKY: Object to the form.

22 A. No. No, I don't believe so. Unless it
23 was -- unless Donna changed the -- I think one
24 instance I just saw some of the paperwork where
25 Donna changed it from MAFS to DSC.

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1 BY MR. MCCARTER:

2 Q. Did you ever sell a car at auction or
3 online, like on -- you know OVE, Online Vehicle
4 Exchange?

5 A. M-hm.

6 Q. Okay. Did you ever sell a car at an
7 auction or on OVE to another dealer at a
8 pre-arranged price?

9 MS. LASKY: Object to the form.

10 A. No.

11 BY MR. MCCARTER:

12 Q. Did you ever buy a car at an auction or on
13 OVE from another dealer at a pre-arranged price?

14 A. Yes.

15 Q. Okay. When would that happen?

16 A. I -- I don't recall dates.

17 Q. And then did you ever put that car, those
18 cars on the floor plan?

19 A. Yes.

20 Q. With DSC?

21 A. Yes.

22 Q. Do you -- do you think that's proper to
23 finance a car like that with a floor plan?

24 MS. LASKY: Object to the form.

25 A. It would have to be, because they did it

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1 for me.

2 BY MR. MCCARTER:

3 Q. Okay. But in that situation, you're using
4 a pre-arranged non-auction price, and you're
5 representing to a floor planner that that's the
6 auction price; right?

7 MS. LASKY: Object to the form.

8 A. I'm not sure of your question, but I can
9 say that -- they would have to be a certain -- the --
10 the vehicle price would have to meet certain
11 guidelines, and that would be set by Donna, and
12 Lourdes would know that.

13 BY MR. MCCARTER:

14 Q. Okay. But if they're -- if they're typically
15 financing the auction price and relying on the
16 auction to set the value and you've preset that
17 value with a dealer unbeknownst to the floor
18 planner, would that be a misrepresentation to the
19 floor planner?

20 MS. LASKY: Object to the form.

21 A. No, because they -- they -- they wouldn't
22 allow an overpriced car on the floor plan.

23 BY MR. MCCARTER:

24 Q. Okay. How do you -- how do you know
25 that? How do you know what DSC would finance?

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1 contacted about being involved in this case by an
2 attorney in Louisiana about a year ago.

3 A. Uh-huh.

4 Q. Okay. Before that, had you ever raised
5 the issue or discussed the issue with DSC about
6 when interest begins to accrue on floor plan cars?

7 A. I had --

8 MS. LASKY: Object to the form.

9 A. I had spoke with Lourdes and Donna on a
10 couple occasions about always looking to save
11 money, and I questioned particularly NextGear and
12 their charging interest two days before it
13 happened -- or two days with -- you know, we put it
14 on today; they already charged you two days.

15 BY MR. MCCARTER:

16 Q. I think you said earlier that was MAFS;
17 right?

18 A. MAFS.

19 Q. Okay.

20 A. And with Lourdes, it was always -- I was
21 always looking to cut -- you know, to save a dollar.
22 And I asked her -- because one -- an occasion, I --
23 I can't recall the exact vehicle or what happened;
24 but I got a vehicle -- like I say, I got a vehicle,
25 called -- got the -- I called to do -- pay the payoff,

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1 and they still didn't have the title, but yet I was
2 charged. I probably asked her for a deal --

3 Q. Okay.

4 A. -- but I don't remember.

5 Q. And -- and that's those title-absent cars;
6 right?

7 A. Yes.

8 Q. Okay.

9 A. That's when I was aware, because it --
10 it's -- DSC was different, because Manheim
11 actually had an office in their auction.

12 Q. Yeah.

13 A. Dealer Services did not. They just had a
14 rep, so I didn't see much of anything like that.

15 Q. Did that happen with MAFS, too? I mean,
16 they would start charging interest when they didn't
17 have the title present yet?

18 A. Yes.

19 Q. And did that happen with AFC?

20 A. That I do not know. I'm -- I'm sure
21 they -- I'm sure they all work alike, but --

22 Q. Okay.

23 A. -- I do not -- don't recall anything about
24 AFC.

25 Q. But in each of those cases, you had the

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1 car, already had it. You were doing whatever you
2 wanted to do with the car.

3 A. Yes.

4 Q. Okay. And do you recall when those
5 discussions with Lourdes would have been?

6 A. No, no. I -- I don't -- I don't know any
7 dates.

8 Q. Okay. Do you recall when you would have
9 had the discussion with Donna about the two days
10 of interest?

11 A. Yes, it would have been in her office.

12 Q. When?

13 A. Oh, the -- probably from day one when I
14 realized that they charged it on the compu --
15 you -- you could look at it on the computer and see
16 it.

17 Q. Okay. So it was transparent to you,
18 something that you were aware of.

19 A. Yeah. And I asked about it, and they
20 said -- their standard answer -- I mean, both of
21 them gave me the sta -- standard answer. "Well,
22 that's the way we do it."

23 Q. Okay. And the same thing with the
24 title-absent, that you -- you were aware you were
25 being charged interest for that period. You just

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1 didn't like it.

2 A. Yeah.

3 Q. Okay.

4 MS. LASKY: Object to the form.

5 BY MR. MCCARTER:

6 Q. And in each case, you continued to
7 borrow from DSC and MAFS after those
8 conversations?

9 A. Yes.

10 Q. Okay. All right.

11 Do -- are you aware that in this case you have
12 RICO allegations that I'll -- you know, I'm not --
13 I'm not trying to pin you to this summary, but
14 generally you're alleging a conspiracy between
15 NextGear, Cox Automotive, Cox Enterprises, John
16 Wick, and others. Are you aware of that?

17 A. Yes.

18 Q. Okay. What's your understanding of how
19 that conspiracy works?

20 A. As -- as far as the word "RICO," I didn't
21 know nothing about it. The only thing I've ever
22 seen is on A&E channel with mobsters. Outside of
23 that, I know nothing about it.

24 Q. Okay. So -- but, factually, what is your
25 understanding of how this conspiracy works?



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1 A. Basically, they were charging interest on
2 titles they did not have.

3 Q. Okay. Are you -- are you aware of any
4 specific conversations between NextGear and Cox
5 Automotive about that?

6 A. No, I wouldn't -- I wouldn't have any idea.

7 Q. Are you aware of any specific
8 conversations between NextGear and Cox
9 Enterprises about that?

10 A. No.

11 Q. Are you aware of any specific
12 conversations between NextGear and John Wick
13 about that?

14 A. No.

15 Q. Are you aware of any conversations
16 among any of those parties about the issue of
17 charging interest?

18 A. No.

19 Q. Okay. And by "conversations," I mean
20 emails, letters. You haven't seen any --

21 A. No.

22 Q. -- of those?

23 A. No, I would have.

24 Q. Okay. Do you -- do you have some --
25 you -- I think you said earlier you understood that

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1 Manheim acquired DSC sometime in 2012?

2 A. Yes.

3 Q. Okay. So did -- do you have any
4 knowledge about interactions between the Cox
5 entities and DSC before that?

6 A. No, I wouldn't have any. No.

7 Q. Okay. And just -- I think you said this,
8 but just to confirm: You never dealt with -- you
9 never had a line of credit with NextGear after DSC
10 and MAFS were merged into Next -- to become
11 NextGear?

12 A. After May of 12, no, we nev -- we didn't
13 have -- ever have no business after May of 12.

14 Q. Okay. Just the collection and bankruptcy
15 stuff?

16 A. Yes.

17 Q. Okay. All right.

18 You've also got what's called an unjust
19 enrichment claim in this case where you're
20 suggesting that NextGear and/or the other
21 defendants received an unfair benefit from you --
22 or an unjust benefit from you. What's your
23 understanding of that?

24 A. Is that --

25 MS. LASKY: Object to the form.

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1 A. I'm not really sure what -- the legal term,
2 but it seemed like I was paying them money that
3 they should not have had yet, you know,

4 BY MR. MCCARTER:

5 Q. And are --

6 A. -- as far as the interest and stuff.

7 Q. Okay. Is -- is that focused on the
8 title-absent cars?

9 A. Well, yes, and -- and I -- I -- of course, I
10 wouldn't know if they char -- how much they
11 charged daily, or if -- even if I -- even if they did
12 have a title, I don't know the length of it because,
13 you know, I just wouldn't have -- the printout did
14 not say that. So I wouldn't have caught it.

15 Q. To the extent you had the cars at that
16 point and you'd been able to take that by putting it
17 on your DSC or MAFS floor plan, what did -- why
18 do you think that's unfair?

19 A. It's just --

20 MS. LASKY: Object to the form.

21 A. -- costing me more money.

22 BY MR. MCCARTER:

23 Q. Okay. Did you -- I think you said
24 title-absent cars were disclosed on the block or
25 some --

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1 BY MR. MCCARTER:

2 Q. Okay. So, on average, you're owing 1
3 or 2 cars at a time now?

4 A. Yes.

5 Q. Okay. And, on average, you think you
6 were owning 15 or so before --

7 A. I'd be -- I'd have 15 and --

8 Q. -- before 2012?

9 A. Yes.

10 Q. Okay. Do you have any recollection of
11 sort of what your net income was annually from the
12 automotive business between 2006 and 2012?

13 A. No, I don't -- I don't recall right off the
14 top of my head.

15 Q. Can you ballpark it?

16 A. I know -- I could give you ballpark of
17 gross sales --

18 Q. Okay.

19 A. -- if that would help you any. It -- it'd
20 be -- let's say prior to 12, we -- we would do
21 anywhere from 800. And I -- I think one time we
22 might have even hit a million. This year our gross
23 sales would luckily to -- be 60,000.

24 Q. Okay. But, obviously, gross sales
25 doesn't -- hasn't --

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1 A. Turn -- turned a --

2 Q. -- yet subtracted out of your --

3 A. -- turned a profit.

4 Q. -- costs; right?

5 MS. LASKY: Wait, wait, wait.

6 BY MR. MCCARTER:

7 Q. Gross sales hasn't yet taken out your
8 cost of doing business; right?

9 A. Correct.

10 Q. All right. So do you have any
11 recollection of what your net income was any time
12 between 2006 and 2012?

13 A. No.

14 Q. Would that be shown on accounting
15 records or tax returns that --

16 A. Tax; uh-huh.

17 Q. -- that you would still have access to?

18 A. Yes.

19 Q. Okay. And since 2012, do you have any
20 sense of what your net income would be from the
21 automotive business?

22 A. Yes.

23 Q. What is it?

24 A. I -- I don't recall the income last year.

25 I -- I don't recall it off the top of my head.



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1 Q. Okay.

2 A. Very little. I mean, once you take
3 expenses as far as insurance, taxes, and that kind
4 of thing.

5 Q. Okay. But again, that would be shown in
6 your tax returns?

7 A. Correct.

8 Q. And you still have access to all of those.

9 A. For the -- well, for -- go back a few
10 years; yes.

11 Q. Okay. Is there -- besides your tax
12 returns, are there any other records you can look
13 at to compare your pre-2012 income -- net income
14 to your post-2012 net income?

15 A. I'm not sure. I'm not -- I don't know. I
16 don't --

17 Q. Okay.

18 A. -- I don't know if we saved records that
19 far back.

20 Q. Okay. Do you recall ever doing a net
21 income statement?

22 A. No.

23 Q. So if it's not in the tax returns, you'd
24 have to reconstruct it from individual purchases
25 and sales?

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1 A. Yes, and then the computer records.

2 Q. Okay. Have -- have you done any
3 analysis of the amount of interest that you believe
4 NextGear overcharged you?

5 A. No.

6 Q. Do you have any estimate of what that
7 would be?

8 A. No, none.

9 Q. Okay. If -- do you have records you
10 could look at to determine that?

11 A. Probably not, maybe not that far back.

12 Q. How far back --

13 A. I --

14 Q. -- would they go?

15 A. Well, I -- like your income tax, we're
16 lucky we found what we did. I wouldn't -- I
17 wouldn't think we could go back much more than
18 five years. I wouldn't have any idea.

19 Q. But your tax returns are not going to
20 show individual --

21 A. Right.

22 Q. -- floors and payoffs, are they?

23 THE WITNESS: What?

24 MS. LASKY: I just didn't want you to
25 answer before he finished.

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1 THE WITNESS: I'm sorry. I do that a
2 lot.

3 A. I do not know. I -- I didn't -- have to --
4 wouldn't know how far back I'd have to go.

5 BY MR. MCCARTER:

6 Q. Well, I just want to be clear: Your tax --
7 your tax returns for the business will not show
8 individually what you paid for a particular car and
9 what you paid it off at; right?

10 A. No.

11 Q. It's going to be an aggregate of all your
12 income.

13 A. Correct.

14 Q. Okay. How far back do your deal jackets
15 go?

16 A. Oh, well, we -- I'd say we turned some in
17 that -- probably at least five years ago. We've
18 probably got some to 2009. I don't recall.

19 We had some tickets, but not that far back --
20 auction tickets from 2007, but we don't -- don't
21 have them -- have them all.

22 Q. Okay. And are all -- those all stored at
23 your business lot?

24 A. Yes; uh-huh.

25 Q. Okay. How long has Jackson Hewitt been

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1 your tax accountant?

2 A. Well, for -- since I was out of high
3 school. It -- it was Jackson -- it was Powell
4 Services. It's now called Jack -- Jackson Hewitt
5 Powell Services, and I -- my parents had them, and
6 I did them even when I was in a high school job
7 and -- since 1980.

8 Q. And they're --

9 A. Basic --

10 Q. -- since -- hang on. Hang on a second.
11 Since 2006, they've been preparing your individual
12 returns and the returns for Mattingly Auto Sales,
13 Inc.?

14 A. Yes.

15 Q. Okay. And those are two separate
16 returns.

17 A. Yes.

18 Q. Okay. All right. Have you attempted to
19 calculate how much you've been damaged by the
20 alleged blacklisting in the KO Book?

21 A. No.

22 Q. Do you have any records that would show
23 the extent of that damage?

24 A. No.

25 Q. Okay. Have you applied for floor plan

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1 credit with anybody else since 2012?

2 A. No.

3 Q. Have you applied for any sort of business
4 credit with anybody since 2012?

5 A. No.

6 Q. Okay. So you haven't been rejected. You
7 just haven't applied.

8 A. Right.

9 Q. Okay. What have -- you know, so
10 you're -- you're making a claim in this case for
11 damages from NextGear related to interest and
12 blacklisting. What -- have you made any effort at
13 all to calculate those damages yourself?

14 A. No.

15 Q. Okay. Have you done anything that you
16 can think of to reduce those damages or to
17 mitigate those damages?

18 A. I don't know what you're -- how you are --
19 how to answer that one.

20 Q. Yeah. So I -- you're claiming some sort
21 of damage from -- from the blacklisting and
22 interest, and so what -- I'm asking you: Have you
23 done anything to try to prevent that damage or
24 reduce that damage?

25 A. From blacklisting?